

Alaska Department of Environmental Conservation
Antidegradation “No Action Proposed” Issues
DRAFT 05-07-15

No Action Proposed Issue	Additional Information about No Action Proposed Issue
Reconvene the Antidegradation Workgroup to re-draft regulation language to incorporate workgroup recommendations/resolutions	<ul style="list-style-type: none"> • The department is conducting public workshops in 2015 in order to solicit additional information to be of assistance in re-working the antidegradation draft regulations • The workshop(s) and second public notice will be utilized rather than reconvening the Antidegradation Workgroup
Jurisdiction of waters and applicability of the proposed regulations	<ul style="list-style-type: none"> • Commenters requested that the proposed antidegradation regulations apply to all state waters, including groundwater • Commenters requested that the antidegradation policy regulations should be revised to limit application only to waters of the U. S. within Alaska • Because additional waters, such as groundwater, include unique characteristics that would require extensive research to address, the department is currently limiting the implementation regulations to waters of the U. S. in Alaska; e.g., surface waters • The department determined that the policy would not be revised to apply only to waters of the U. S. in Alaska, in order to allow for flexibility to apply antidegradation to other situations if required and/or if expanded at a later date; e.g., groundwater
Opposition to repeal of 18 AAC 70.015(a)(2)(D) (Methods of pollution prevention, control, and treatment found by the department to be the most effective and reasonable will be applied to all wastes and other substances to be discharged)	<ul style="list-style-type: none"> • The repealed regulation is a step in implementing antidegradation policy • Moving from “policy” to a step in the implementation methods, provides for clearer implementation methods. The repealed section is simply moved to another area of regulations
The proposed implementation regulations do not include a specific Alaskan Native Tribal involvement and consultation process, nor were tribes consulted within the development of the regulations	<ul style="list-style-type: none"> • In addition, a letter was issued to all tribal and local governments for the initial antidegradation regulations public notice. Notice was also issued via several department email listservs. This notification process will be followed for the second public notice as well • The department is available to meet with tribes upon request to discuss proposed regulations, as well as answer questions that are submitted in writing or asked in a public meeting. Questions and answers will be publically available through posting on the department’s webpage • Following its “APDES Guidance for Local and Tribal Governments,” the department involves tribes on a permit specific basis according to established department procedures; e.g., early notification of local and tribal governments

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Tier Protection Level - Clarification	<ul style="list-style-type: none"> • The applicant may submit characteristics of the receiving water, including special management designations • The proposed regulations do not limit the information that may be submitted in support of a permit application
Tier 1 Flexibility: Tier 1 data submittals should be as flexible as Tier 2 data submittals	<ul style="list-style-type: none"> • Tier 1 waters have different (less flexible) baseline requirements and findings • A Tier 2 water requires more flexibility due to the higher water quality level being protected and that due to the additional amount of data that may be required for the Tier 2 analysis, permit-by-permit flexibility is necessary • Tier 1 is the protection of existing uses which is (always) required, therefore, a minimum level of data is required • Tier 2 reviews anticipate a broader range of applicant types and assimilative capacity for a wide variety of parameters
Tier 1 existing use protection should apply only to the waterbody as a whole and is satisfied through compliance with existing regulatory water quality standards which protect all existing uses	<ul style="list-style-type: none"> • Alaska’s water quality criteria are established to protect <u>designated</u> uses of waterbodies <ul style="list-style-type: none"> ○ “Existing” and “designated” do not mean the same thing in terms of waterbody use ○ Most <u>existing</u> uses are part of designated uses, although there can be exceptions • For the purpose of Tier 1 analysis, existing uses apply to a waterbody or a segment of a waterbody • Applying uses to the “waterbody as a whole” is only appropriate for specific regulatory exceptions when allowed in a permit or authorization i.e., a short term variance, a zone of deposit or a mixing zone
Tier 1 – Mixing Zone Clarification Clarification requested on whether or not it is allowable to permit a discharge of a pollutant to a Tier 1 water that is impaired by that pollutant	<ul style="list-style-type: none"> • Mixing zone requirements are addressed through permitting process – under separate regulation 18 AAC 70.240 • In general, discharge of a pollutant to a water classified as Tier 1 for that pollutant is not allowed, unless this occurs through other approved regulatory paths; e.g., Total Maximum Daily Load (TMDL)
The proposed antidegradation analysis exemption for emergency response actions be expanded to include other emergency cleanups, e.g. CERCLA, OPA	<ul style="list-style-type: none"> • Longer term cleanup activities, such as CERCLA projects, are not considered “emergency,” however, may fall under the category of watershed restoration activities exempted • Where cleanup activities are regulated under an APDES permit or section 404 permit, antidegradation analysis would be required

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An additional exemption from antidegradation analysis requested, based on updated calculations of water quality-based effluent limits	<ul style="list-style-type: none"> The proposed regulations serve the purpose of clarifying situations where antidegradation analyses would not be required within the scope of permit application and compliance, rather than describing a general class of activities exempted from antidegradation analysis
Request to revise the proposed antidegradation regulations to allow ADEC to reference information included in National Environmental Protection Act, environmental assessments, or environmental impact statement documents for the Tier 2 alternatives analysis	<ul style="list-style-type: none"> The proposed regulation do not limit the information that may be submitted in support of a permit application The regulations do not necessarily need to prescriptively reference specific documents. If relevant, supporting information available in alternate documents may be submitted to the department for review and consideration as part of the antidegradation analysis and permitting process
Non-point sources are not subject to antidegradation review; remove references to non-point sources	<ul style="list-style-type: none"> Nonpoint sources and associated best management practices (BMPs) are specifically referenced in both state and federal regulations for antidegradation policy and are part of antidegradation analysis
<p>Applicants submit “any additional information as requested by the department”</p> <ul style="list-style-type: none"> Concern that this language was open-ended, and should be limited to “reasonable additional information” 	<ul style="list-style-type: none"> The wording of the subsection makes clear that the purpose of additional information request is to obtain information to complete the antidegradation analysis only
<p>Social or Economic Analysis</p> <ul style="list-style-type: none"> A suggestions was made that all social and economic impacts, positive and negative, be required and evaluated as well as evaluating the importance of maintaining (not-degrading) existing water quality Request verification of applicant’s submitted economic (fiscal) information 	<ul style="list-style-type: none"> The <i>importance</i> is the required criteria to be satisfied and “negative” impacts should be addressed through other processes such as land use planning, the National Environmental Policy Act (NEPA), etc., which are outside of the scope of the antidegradation regulations

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<p>Clarification on antidegradation analysis on a “portion of a discharge”</p> <ul style="list-style-type: none"> • How will an antidegradation analysis be performed on only the expanded portion of a discharge? • A Tier 2 analysis is only necessary when an additional pollutant load is proposed to be discharged 	<ul style="list-style-type: none"> • The antidegradation analysis included in the permit’s fact sheet would state that the subject antidegradation analysis is only for the expanded portion of the discharge proposed by the permittee, and not any portion of the discharge for which an antidegradation analysis had already been completed • The antidegradation analysis for the expanded portion of the discharge would be completed using the criteria specified in the promulgated regulations
<p>Baseline Water Quality (BWQ) Data</p> <ul style="list-style-type: none"> • More technical description regarding what water quality data is “necessary” for a range of project sizes, discharge types, and receiving water characteristics • More flexibility is needed to classify waterbody and measure assimilative capacity • Surrogate water and/or assumed “0” baseline concentration 	<ul style="list-style-type: none"> • Baseline water quality will be required only if determined necessary by the department • Baseline water quality information may also be used to determine the assimilative capacity of the receiving water • With respect to gathering baseline data, a rule of flexibility applicable to both waterbody classification and measuring assimilative capacity was a recommendation from the Antidegradation Workgroup report • Flexibility in data requirements for waterbody classification is already existing department practice
<p>Applicant submitted information – sufficient and credible technical criteria</p> <ul style="list-style-type: none"> • Concern that there is not enough information in the regulation to explain what water quality data is “sufficient and credible” and/or specified for ranges of project sizes 	<ul style="list-style-type: none"> • Information requested is very industry and permit specific, so it will be evaluated through the permitting process • Focus on the necessity of flexibility during the permitting process, especially in regards to the issue of Background Water Quality data